

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Criminal No. 10-326-01 (DSD/FLN)

Plaintiff,

v.

**ORDER AND
REPORT &
RECOMMENDATION**

John Anthony Spencer,

Defendant.

David J. MacLaughlin, Assistant United States Attorney, for Plaintiff.
Steve L. Bergeson for Defendant.

THIS MATTER came before the undersigned United States Magistrate Judge on March 9, 2011 on the Government's and Defendant's pretrial motions.

Based upon all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that the Government's Motion for Discovery Pursuant to Federal Rules of Criminal Procedure 16(b), 12.1, 12.2 and 26.2 [#54] is **GRANTED**.

Based upon all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Defendant's Motions are **GRANTED, in part**, and **DENIED, in part**, as follows:

1. Defendant's Motion for Government Agents to Retain Rough Notes [#30] is **GRANTED**.
2. Defendant's Motion for Discovery [#31] is **GRANTED** to the extent required by the Federal Rules of Criminal Procedure.
3. Defendant's Motion for Disclosure of Expert Witness Testimony [#32] is **GRANTED** to the extent required by the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.
4. Defendant's Motion for Disclosure of Electronic Surveillance and Wiretapping [#33]

is **GRANTED**, but appears to be moot.

5. Defendant's Motion for Disclosure of Rule 404(b) Evidence [#34] is **GRANTED**. The Government shall make its disclosures to Defendant on or before May 2, 2011.
6. Defendant's Motion for Disclosure of Evidence Favorable to Defendant [#35] is **GRANTED** to the extent required by *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny.
7. Defendant's Motion for List of Government Witnesses [#36] is **DENIED**. The Government, however, will voluntarily provide the material to Defendant no later than five (5) days before trial.
8. Defendant's Motion for Early Disclosure of Jencks Act Material [#37] is **DENIED**. The Government, however, will voluntarily provide the material to Defendant no later than five (5) days before trial.
9. Defendant's Motion for Disclosure of Post-Conspiracy Statements of Co-Defendants [#38] is **DENIED** except to the extent required by the Jencks Act or *Brady v. Maryland*, 373 U.S. 83 (1963).
10. Defendant's Motion for Severance of Defendants [#39] is **DENIED** as moot.

The Government represented at the hearing that Defendant had made no statements. It appears that the Defendant's Motion to Suppress Statements, Admissions, and Answers [#40] is moot. It is therefore **RECOMMENDED** that Defendant's suppression motion be **DENIED** [#40].

DATED: March 10, 2011

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **March 24, 2011**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under the rules shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made.

Unless the parties are prepared to stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and cause to be filed by **March 24, 2011**, a complete transcript of the hearing.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.